

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

N.E.,
Individually and on behalf of H.E., a minor)
)
)
Plaintiff,)
)
v.)
)
BLUE CROSS BLUE SHIELD OF)
NORTH CAROLINA and CARSON)
DELLOSA PUBLISHING, LLC,)
)
Defendants.)

1:21CV684

ORDER

The Recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on February 24, 2023, was served on the parties in this action. (ECF Nos. 47, 48.) Defendant filed objections to the Magistrate Judge's Recommendation, (*see* ECF No. 49), to which Plaintiff responded, (*see* ECF No. 50).

The Court has appropriately reviewed the Magistrate Judge's Recommendation and has made a *de novo* determination in accord with the Magistrate Judge's Recommendation. The Court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, (ECF No. 43), is **GRANTED IN PART AND DENIED IN PART** for the reasons set out in the Magistrate Judge's Recommendation; specifically that the Motion to Dismiss as to the First Cause of Action is **DENIED** without prejudice to further consideration of these issues on the record on appropriate dispositive motions, that the

Motion to Dismiss as to the Second Cause of Action is **DENIED** to the extent that the claim based on the Parity Act may proceed, reserving determination on whether any potential relief would be part of Plaintiff's First Cause of Action under 29 U.S.C. § 1132(a)(1)(B), or would first require reformation of the Plan terms under 29 U.S.C. § 1132(a)(3); and that the Motion to Dismiss as to the Third Cause of Action is **GRANTED** as to Defendant Blue Cross.

This, the 29th day of March 2023.

/s/ Loretta C. Biggs
United States District Judge